

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

OPINION, MEMORANDUM AND ORDER

Before the Court is defendants'¹ motion to file their answer out of time. [ECF No. 34].

Also before the Court is plaintiff's motion for entry of default against defendants. [ECF No. 33].

Defendants' answer was due to the Court on October 3, 2024, however, defendants state that counsel was unable to file the answer in a timely manner “[d]ue to press of business.” After review of the record, the Court will grant defendants an extension of time to file their answer out of time and deny plaintiff’s motion for entry of default, without prejudice. The Clerk will be instructed to file the answer as a separate document on the docket. [ECF No. 34-1.]

After review of the record in this matter, the Court notes that defendant Deven Montgomery was served with summons on August 30, 2024. [ECF No. 25]. However, no answer or other responsive pleading has yet been filed on his behalf. On October 16, 2024, the Court received an email from Courtney Chapin, Legal Counsel at the Missouri Department of Corrections indicating that the Department “remains unable to waive service for former employee Deven Montgomery.” [ECF No. 32]. As the Court already served Mr. Montgomery with summons in this matter, the Court will order counsel for the Department of Corrections to indicate whether the Department

¹Defense counsel Luke A Hawley filed the motion on behalf of Perry Arnold, Kenneth Paine, Caelan Upton and Hayden Dean.

will be representing Mr. Montgomery. Counsel will have fourteen (14) days to either file an answer or other responsive pleading for Mr. Montgomery or file a notice that the Missouri Department of Corrections will not be representing Mr. Montgomery in this action. If the Department decides not to represent Mr. Montgomery, the Court will thereafter instruct plaintiff to file motions for entry of default and for default judgment pursuant to Federal Rule of Civil Procedure 55(a) and (b).

Similarly, the Court notes that defendant Felicia Williams was served through the Court's waiver agreement on October 16, 2024. [ECF No. 32]. The Court reminds defense counsel that an answer or other responsive pleading for Ms. Williams is due to this Court no later than December 15, 2024.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to file their answer out of time [ECF No. 34] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall docket the answer on the Court's docket.

IT IS FURTHER ORDERED that plaintiff's motion for entry of default [ECF No. 33] is **DENIED**.

IT IS FURTHER ORDERED that counsel for defendants **shall have fourteen (14) days**, to enter an appearance and either file an answer or other responsive pleading on behalf of defendant Deven Montgomery or notify the Court that he will not be doing so.

IT IS FURTHER ORDERED that defense counsel's answer or other responsive pleading for defendant Felicia Williams is due to this Court no later than **December 15, 2024**.

Dated this 22nd day of October, 2024.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE